IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

CRP.No. 1071 OF 2002()

OS.229/1998 OF MUNSIFF COURT, KATTAPPANA

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REVN. PETITIONER: PLAINTIFF

THOMAS JOSEPH @ JOSE,S/O.JOSEPH,
POOVATHANIKUNNEL HOUSE,MAVADY P.O.,
KALKOONTHAL VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.T.P.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS: DEFENDANTS

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1. JOSEPH S/O.PAULOSE,MOOZHAYIL HOUSE,
MAVADY P.O.,KALKONTHAL VILLAGE,IDUKKI DISTRICT

2. JOSE, MOOTHASSERIL HOUSE,MAVADY P.O.,
KALKOONTHAL VILLAGE,UDUMBANCHOLA TALUK,

BY ADV. SMT.ASHA P.KURIAKOSE
SRI.V.GIRI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMANJ.

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C.R.P. NO. 1071 OF 2002

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DATED THIS, THE 16TH DAY OF JULY, 2007.

O R D E R

Petitioner is the plaintiff in O.S. 229/1998 on the file of the Munsiff's Court, Kattappana. The suit was one filed under Section 6 of the Specific Relief Act for recovery of possession alleging that he was dispossessed without his consent, of the plaint schedule property, The first defendant, on the other hand, instituted O.S. 213/1998 contending that the petitioner herein was a licensee of a shop room who agreed to vacate the same soon he finds an alternate accommodation and on 16.6.1998, he voluntarily vacated the room and took away all his belongings from there; but later, attempted to trespass into the property and therefore, the suit was instituted for an injunction restraining from trespass. The second defendant in O.S. 229/1998 is the person in whose favour the property was sold during the pendency of the suits. Both the suits were tried together and disposed of by a common judgment, by which both the suits were dismissed. Aggrieved by the dismissal of O.S. 229/1998, the plaintiff has filed this revision petition.

2. The court below has framed necessary issues and found that the lease alleged by the petitioner is not proved. There is no elaborate

discussion of the evidence adduced by the parties. It was the specific case of the revision petitioner that he was paying Rs. 400/- as rent since April, 1998 and subsequently, in May, 1998 also. The receipt of the said amount is not disputed by the first respondent herein. However, according to the petitioner, room rent was not accepted and it was sent by Money Order as evidenced by Ext.B5. He also stated that a rent deed was executed by him in favour of the first defendant and further filed a petition seeking to produce the same. But the first respondent disputed the existence of any such rent deed. According to him, the plaintiff was only a licensee; but no licence deed was also produced. Therefore, this is a case where neither the licence or the rent deed is produced by either of the parties. Therefore, the question of lease or licence necessarily has to be decided on the materials available on record. Both sides examined witnesses in support of their contention. Petitioner herein examined six witnesses including the Sub Inspector of Police and a scribe who is stated to have prepared the lease deed and also the President of the Merchants' Association before whom complaints were made by both the petitioner and the first respondent. The specific case of the petitioner was that he was forcefully dispossessed and various goods kept in the provision store and money belonging to him were willfully removed by the first respondent, against which a criminal complaint was filed. Further, petitioner has also adduced evidence to show

that he has taken out licence from the Panchayat for running a provision shop in the schedule premises. He has also taken an insurance policy insuring the goods kept in the plaint schedule premises. Ext.B3 is the policy of insurance and Ext.B1 is the receipt issued for licence fee, issued by the Panchayat. Various other documents numbering about 14 were produced by the petitioner herein. Curiously enough, the court below did not discuss any of these evidences, but simply brushed aside the contention of the petitioner and held that the evidence produced by him does not prove a case of lease, which is far from satisfactory.

3. In the circumstances, the order passed by the court below is erroneous in law. The same is set aside and the matter is remanded for fresh consideration in accordance with law. The court below shall pass fresh orders, after discussing the evidence and shall come to an independent conclusion in the case. Since both the cases were tried together and evidence adduced taking O.S. 213/1998 as the main case, evidence adduced by the respondents in this case will certainly be considered as evidence on their side.

The parties shall appear before the court below on 13.8.2007.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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C.R.P. 1071/2002

O R D E R

16.7.2007.